

UNPUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee.

v.

No. 98-4216

NELSON HINES,
Defendant-Appellant.

Appeal from the United States District Court
for the District of Maryland, at Baltimore.
J. Frederick Motz, Chief District Judge.
(CR-93-205)

Submitted: July 21, 1998

Decided: October 26, 1998

Before HAMILTON, WILLIAMS, and MICHAEL, Circuit Judges.

Remanded by unpublished per curiam opinion.

COUNSEL

Barbara Gold, Baltimore, Maryland, for Appellant. Lynne A. Battaglia, United States Attorney, Bonnie S. Greenberg, Assistant United States Attorney, Baltimore, Maryland, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See
Local Rule 36(c).

OPINION

PER CURIAM:

Nelson Hines was sentenced in 1993 for drug offenses and for using or carrying a firearm in connection with a drug offense in violation of 18 U.S.C.A. § 924(c) (West Supp. 1998). After the Supreme Court's decision in Bailey v. United States, 516 U.S. 137 (1995), Hines filed a motion to correct sentence pursuant to 28 U.S.C.A. § 2255 (West 1994 & Supp. 1998), seeking vacation of his § 924(c) conviction. The district court vacated the § 924(c) count but refused the government's request to resentence Hines on the drug counts. The government appealed and we remanded the case for resentencing. See United States v. Hines, No. 96-7465 (4th Cir. Apr. 8, 1997) (unpublished). Hines was resentedenced to a term of 168 months imprisonment. The judgment and commitment order was entered on February 5, 1998. Hines filed a notice of appeal on March 9, 1998, after the ten-day appeal period had expired. He did not request an extension of time to file the notice of appeal or make a showing of excusable neglect, and the district court has not granted an extension of time to file.

In criminal cases, a defendant must file his notice of appeal within ten days of the entry of judgment. Fed. R. App. P. 4(b). With or without a motion, the district court may grant an extension of time of up to thirty days upon a showing of excusable neglect. See United States v. Reyes, 759 F.2d 351, 353 (4th Cir. 1985); United States v. Schuchardt, 685 F.2d 901, 902 (4th Cir. 1982). If a defendant files his notice of appeal outside the ten-day appeal period, but within the thirty-day extension period, the district court must make a factual finding as to whether excusable neglect warrants an extension of the ten-day period. See Reyes, 759 F.2d at 353.

Here, Hines noted his appeal outside the ten-day appeal period but within the thirty-day extension period applicable upon a showing of excusable neglect. Therefore, we remand this case to the district court to allow Hines thirty days within which to request, upon a showing of excusable neglect, an extension of the appeal period. We dispense with oral argument because the facts and legal contentions are ade-

quately presented in the materials before the court and argument would not aid the decisional process.

REMANDED